

United States
Circuit Court of Appeals
For the Ninth Circuit.

TOSHIKO INABA,

Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration,
San Francisco, California,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
Southern Division.

FILED

SEP 28 1929

PAUL P. O'BRIEN,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Petitioner and Appellant:

ALBERT H. ELLIOT, Esq., and GUY C.
CALDEN, Esq., Flatiron Bldg., San Fran-
cisco, Calif.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Calif.

In the United States District Court, Southern Di-
vision, Northern District, California.

No. 19,919-L.

TOSHIKO INABA,

Petitioner and Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration,
Respondent and Appellee.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare transcript on appeal in the
above-entitled case to be composed of the following
papers, to wit:

1. Amended petition for writ of habeas corpus.
2. Order to show cause.

3. Minute order dated March 25th, 1929.
4. Minute order dated May 10th, 1929.
5. Notice of filing of excerpts of testimony from the original Immigration Record.
6. Respondent's memorandum of excerpts of testimony from the original Immigration Record.
7. Petition for appeal.
8. Order allowing petition for appeal.
9. Assignment of errors.
10. Cost bond on appeal.

ALBERT H. ELLIOT,
GUY C. CALDEN,

Attorneys for Petitioner and Appellant.

Filed August 30, 1929. [1*]

In the United States District Court, Southern Division,
Northern District, California.

No. 19,919-L.

TOSHIKO INABA,

Petitioner,

vs.

JOHN D. NAGLE, Commissioner of Immigration,
Respondent.

*Page-number appearing at the foot of page of original certified Transcript of Record.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable District Court of the United States, in and for the Southern Division, Northern District, California:

The petition of Toshiko Inaba respectfully shows:

I.

That petitioner is imprisoned and restrained of her liberty, and is being held in detention at the United States Immigration Station, at Angel Island, California, and is in the custody of the Hon. John D. Nagle, Commissioner of Immigration.

II.

That your petitioner was born in the town of Walnut Grove, County of Sacramento, State of California, on the 11th day of October, 1908, and is a citizen of the United States and of the State of California.

III.

That petitioner alleges the following facts and circumstances:

That upon the 13th day of December, 1911, petitioner, who was then a minor of the age of three (3) years, went to Japan and lived in the household of her uncle, Juzo Inaba, and that upon said date the father and mother of petitioner, to wit, Hikotaro Inaba and Kazume Inaba, did not accompany petitioner to Japan, but remained in the State of Cali-

fornia and ever [2] since have remained therein and are now residents of and domiciled therein.

That thereafter and on the 15th day of June, 1927, petitioner, without her own knowledge and contrary to and without the consent of her parents, the said Hikotaro Inaba and Kazume Inaba, was married to Tirao Yamamoto, who was a citizen of the Empire of Japan and not a citizen of the United States. That petitioner was married to the said Torao Yamamoto under the laws of Japan, but that under the said laws of Japan the said marriage was void and of no avail because the said Hikotaro Inaba and Kazume Inaba, the parents of petitioner, did not consent in writing, or otherwise thereto.

That petitioner did not cohabit with said Torao Yamamoto, but continued to live with the people of the household of her said uncle and as a member of his family.

That petitioner within four (4) months after the said marriage, and immediately after she had gained knowledge of said marriage, promptly objected thereto and on the 22d day of September, 1927, caused her family record to be changed so that she would not thereby be a member of the family of the said Torao Yamamoto, but would be a member of her own family, and that said acts of petitioner constitute, under Japanese law existing at the time, a complete and absolute separation of the said alleged marriage between petitioner and the said Torao Yamamoto.

That at all of the times herein mentioned petitioner was a minor.

That on or about the 19th day of August, 1928, petitioner migrated from the Empire of Japan to the Port of San Francisco in the State of California, United States of America, arriving in said Port of San Francisco on September 3d, 1928; that petitioner was not possessed of a passport or *ny* visa endorsed thereon but applied to the said Hon. John D. Nagle, Commissioner of Immigration, for admission to [3] the United States as a citizen thereof and presented to the Board of Special Inquiry at San Francisco evidence of the fact that she was born in California and was a citizen of the State of California, and of the United States.

That after hearing by the said Board of Special Inquiry, the said Board found that petitioner was born in the United States as alleged herein, that petitioner was of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration Laws, and that she had lost her American citizenship by marriage to a person not a citizen of the United States and not eligible to citizenship therein.

That thereafter and on the 17th day of September, 1928, the said Board of Special Inquiry rendered its decision in words following, to wit:

“This Board has unanimously voted to deny your admission to the United States, on the ground that you are a person of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration Laws, you having lost your American citizenship by marriage to an Oriental. This decision is not final, you have the right to appeal to the Secretary of La-

bor at Washington, D. C. If you are deported, it will be at the expense of the steamship company bringing you here, which must furnish you with quarters equal to those occupied by you on the vessel by which you came. Do you wish to appeal? (Yes.)”

That the said decision is based upon the ground that petitioner is of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration Laws.

That thereafter, upon rehearing, the said Board of Special Inquiry again found that petitioner was born in the United States as alleged herein, that she was of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration Laws, and that she had lost her American [4] citizenship by marriage to a person not a citizen of the United States and not eligible to citizenship therein.

That thereafter and on the 5th day of November, 1928, the said Board of Special Inquiry rendered its decision in words following, to wit:

“This Board has unanimously voted to deny your admission into the United States on the ground that you are a person of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration Laws, you having lost your American citizenship by marriage to an Oriental. This decision is not final; you have the right to appeal to the Secretary of Labor at Washington, D. C.

“If you are deported, it will be at the expense of the steamship company bringing you here, which must furnish you with quarters equal to those occupied by you on the vessel by which you came.

“Do you wish to appeal? (Yes.)”

That thereafter and after proceedings duly had, made and given, petitioner took an appeal from the said decision of the said Board of Special Inquiry to the Secretary of Labor, at Washington, D. C., in accordance with the statutes in those cases made and provided.

That thereafter, and on the 28th day of January, 1929, the Board of Review at Washington, D. C., dismissed said appeal on the ground that the said petitioner is a person of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration Laws, she having expatriated herself by her alleged marriage with Torao Yamamoto.

That said decision of the Board of Review is in words and figures, as follows:

“55642/657—San Francisco.

January 28th, 1929.

In Re: Toshiko Inaba.

No.

This case comes before the Board of Review as a request for permanent admission. [5]

Presiding: Messrs. Winings, Finucane, Zimmerman.

Heard: Attorney Roger O'Donnel.

This record relates to a twenty-year old female, a citizen of the United States, Japanese race, who arrived at the Port of San Francisco, on September 3d, 1928, in the United States from birth until three years of age and coming with the intention of remaining permanently. No immigration visa of any kind.

Excluded: Of a race ineligible to citizenship.

The applicant was born in this country and is, therefore, born a citizen. She was taken *aboard* when a small child. A Japanese marriage ceremony was entered into with a Japanese subject. Subsequently the applicant was registered in her family record.

Question was raised as to whether or not the registration was tantamount to an annulment or merely termination of the marriage which was conceded to be lawful. It is established by the record that the applicant was lawfully married to a subject of Japan and subsequent to such lawful marriage, it was terminated.

This question is more fully discussed in the opinion of the Solicitor of January 21st, 1929. The question was also presented whether being born in this country and having lost citizenship by marriage to an alien ineligible to citizenship, which at the time of the application for admission was non-existent, the alien was ineligible to citizenship.

In the opinion above referred to, it was held that this alien is ineligible to citizenship and therefore, as she is an applicant for permanent residence,

exclusion is required. It is recommended that the excluding decision be affirmed.

L. PAUL WINING,
Chairman, Secy. and Comr.,
Gen'l Board of Review.

T. G. F./CbP. So ordered:

W. U. AUSTEN,
Assistant Secretary. [6]

That the said decisions of the said Board of Special Inquiry and of the said Secretary of Labor are erroneous in law and that said officials have misconstrued the expatriation laws of the United States.

That the said petitioner is not imprisoned or restrained by virtue of any formal order or process or decree of any court. That the said imprisonment and detention of petitioner are illegal and without authority for the following reasons:

(a) That said petitioner is a citizen of the United States and has committed no act of expatriation;

(b) That the said Hon. John D. Nagle, Commissioner of Immigration, has no authority in law or jurisdiction to issue any warrant for the removal and deportation to Japan of petitioner as there is no proof before the said Commissioner of Immigration to show or justify the conclusion that petitioner is not a citizen of the United States, but, on the other hand, that the evidence as herein alleged amply shows that the alleged marriage of petitioner and the said Torao Yamamoto was no marriage at all under the laws of Japan or under the laws of the State of California or of the United States.

WHEREFORE your petitioner prays that a writ of habeas corpus issue herein, and that after due hearing thereon, a writ may be issued discharging petitioner from the custody of the said Hon. John D. Nagle, Commissioner of Immigration, and that an order to show cause be issued forthwith ordering that the said Hon. John D. Nagle, Commissioner of Immigration, be and appear before this Court on the — day of —, 1929, at the hour of — o'clock A. M. of said day at the courtroom of said court, at the Post Office Building, San Francisco, California, to show cause, if any he has, why a writ of habeas corpus should not be issued as herein prayed, and that a copy of this petition and said order be served upon the said Hon. John D. Nagle, Commissioner of Immigration, and upon the United States Attorney in said Northern District of [7] California, Southern Division, and that the said Hon. John D. Nagle, Commissioner of Immigration, or whoever acting under his orders shall have the custody of the said petitioner, be and he is hereby ordered and directed to release petitioner from the custody of the said Hon. John D. Nagle, Commissioner of Immigration, temporarily pending the hearing of this petition upon the petitioner giving a proper bond in such cases made and provided in the sum of \$——.

TOSHIKO INABA,
Petitioner.

ALBERT H. ELLIOT,
GUY C. CALDEN,

Attorneys for Petitioner. [8]

United States of America,
Northern District of California,—ss.

Albert H. Elliot deposes and says: That he is one of the attorneys for the petitioner named in the foregoing petition, that the said petitioner is restrained of her liberty and in the custody of Hon. John D. Nagle, Commissioner of Immigration, at Angel Island, California, and for that reason that he makes this affidavit; that the said petition is true of his own knowledge except as to the matters therein stated on his information and belief, and as to such matters he believes it to be true.

ALBERT H. ELLIOT.

Subscribed and sworn this 11th day of March, 1929.

EVELYN LaFARGUE,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Oct. 17th, 1931.

Filed March 11, 1929.

Service of the within amended petition and receipt of a copy is hereby admitted this 11th day of March, 1929.

GEORGE J. HATFIELD. [9]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the petition of Toshiko Inaba filed herewith,—

IT IS HEREBY ORDERED that Hon. John D. Nagle, Commissioner of Immigration, be and appear before this court on Saturday, the 9th day of February, 1929, at the hour of 10 o'clock A. M. of said day at the courtroom of said court, Post Office Building, San Francisco, California, to show cause, if any he has, why a writ of habeas corpus should not issue herein.

IT IS FURTHER ORDERED that a copy of this order and said petition be served upon said Hon. John D. Nagle, Commissioner of Immigration, and upon the United States Attorney in the said Northern District of California.

IT IS FURTHER ORDERED that said Hon. John D. Nagle, Commissioner of Immigration, or whoever acting under his orders shall have the custody of the petitioner, Toshiko Inaba, be and he is hereby ordered and directed to produce the said petitioner at the time herein specified and to hold said petitioner within the jurisdiction of this court.

Done in open court this 7th day of February, 1929.

HAROLD LOUDERBACK,
Judge.

Filed February 7, 1929. [10]

[Title of Court and Cause.]

NOTICE RE FILING OF EXCERPTS OF TESTIMONY FROM THE ORIGINAL IMMIGRATION RECORD.

To the Petitioner in the Above-entitled Matter, and to Albert H. Elliot and Guy C. Calden, Her Attorneys:

PLEASE TAKE NOTICE that the respondent in the above-entitled matter will upon the hearing on the order to show cause rely upon certain excerpts of testimony from the original immigration record additional to the portions of such record which are set out in the petition for writ of habeas corpus herein, a copy of such additional excerpts being annexed hereto. Please examine same prior to the hearing on the order to show cause.

Dated:

GEORGE J. HATFIELD,
United States Attorney,
(Attorney for Respondent).
Per WILLIAM A. O'BRIEN.

Filed March 25, 1929.

Service of the within ——— by copy admitted the 21st day of February, 1929.

ALBERT H. ELLIOT and
GUY C. CALDEN,
Attorneys for Petitioner. [11]

[Title of Court and Cause.]

RESPONDENT'S MEMORANDUM OF EX-
CERPTS OF TESTIMONY FROM THE
ORIGINAL IMMIGRATION RECORD.

The witnesses herein are:

TOSHIKO INABA, aged 20, female, born Walnut Grove, California; in Japan from 1911 to September 3d, 1928.

AKIRA INABA; aged 18; male; born in the United States; in Japan from 1911 to September 3d, 1928; brother of the aforesaid applicant Toshiko Inaba.

HIKOTARU INABA; aged 52; male; born in Japan; first came to United States in 1902; went back to Japan in August, 1926, and returned to United States in November, 1926; father of the above-named applicant Toshiko Inaba.

The fact question in dispute is whether there was a lawful marriage entered into in Japan in October, 1927, between the applicant, Toshiko Inaba, and Tiraio Yamamoto, a native and citizen of Japan, and an alien ineligible to citizenship in the United States.

We quote below excerpts of testimony before the Board of Special Inquiry, such excerpts being quoted from the original Immigration Record, on the basis of which the Board of Special Inquiry, and the Secretary of Labor reached their finding of fact that such a legal marriage had occurred.

I.

Legality of the Marriage Under the Laws of Japan.

Testimony of Applicant, Toshiko Inaba: [12]

“Q. Have you ever been married?

A. Yes, I have.

Q. When, where, and to whom were you married?

A. To Yamoto, Torao, in Japan, the year before last, in October.”

(Immigration Record 55642/657—p. 3.)

* * * * *

“By the CHAIRMAN, to the INTERPRETER.—What does this record disclose as to the marriage and annulment of marriage of Toshiko Inaba?

By the INTERPRETER.—It shows her to have been registered into the family of Yamamoto Tatorao, Showa 2 (1927) June 15th, as his wife, and on the 22d day of September, of the same year, she was registered back into her own family.

Q. Does this record show whether or not the marriage union was dissolved?

A. Yes, by being registered back into her own family.

Q. Between the time of your registration into the family of Yamamoto and the time of your re-registration into your own family, were you considered to be the lawful wife of Yamamoto Tatorao?

A. I did not like the arrangement so I stayed at my own home; according to rules I showed my face at my husband's home, once, but that is all.

* * * * *

Q. Your registration into Yamamoto's family made you, in the eyes of the Japanese law, and of the Japanese people, the legal wife of Yamamoto Tatorao, did it not?

A. Yes, they all knew I was registered as his wife.

(Id., p. 9.)

Testimony of HIKOTARU INABA.

“Q. Has your daughter Toshiko been married?

A. Yes.

Q. When, where and to whom was she married?

A. 1926, in October, to Yamamoto, Torao.”

(Id., p. 6.)

“Q. You testified on board the ‘Taiyo Maru’ in behalf of your daughter Tishiko, that she had been married and divorced, did you not? A. Yes.

Q. How was she married?

A. My brother-in-law, my wife's brother, who had charge of the children, in Japan, induced my daughter to be registered into my older brother's family, as the wife of Yamamoto, Tatorao; she did not wish to be married [13] but my brother-in-law overruled her objections. I do not know when they registered the girl as I was in the United States, and I also cannot say when the registration *as* annuled.

Q. Was your daughter's registration, as Yamamoto's wife made without your knowledge or consent?

A. I did not know about the proposal, as my
brother-in-law spoke to me about it and as I was

greatly obligated to him for taking care of my children. I said, 'Do whatever you please'; and I left it in his hands. This matter was brought before me when I was on a visit to Japan.

Q. Was your formal consent essential to the registration of your daughter as Yamamoto's wife?

A. In a way, yes, because (changes) No. My brother was responsible for everything; I left everything in his care.

Q. Is your daughter, Toshiko, in the eyes of the Japanese law and of the Japanese people, considered the lawful wife of Yamamoto Tatorao?

A. Yes, according to registry, but I received a letter that she would not go to Yamamoto's house."

(Id., pp. 10, 11.)

Testimony of AKIRA INABA:

"Q. Has your sister Toshiko ever been married?

A. Yes, she was at the age of 18. She never lived with her husband as his wife. They were cousins and my relatives thought it best to cancel her marriage, so that was done soon after the ceremony.

Q. Did your sister live with her husband for about one month?

A. Maybe one or two months."

(Id., p. 5.)

There is also quoted below a certificate under seal of the Consulate General of Japan, dated October 15th, 1928, which was in evidence before the board:

“To Whom It May Concern:

This is to certify that the Family Record of Toshiko Inaba shows that her registration was cancelled from that of her Family Record under date of June 15, 1927, upon her marriage to Torao Yamamoto. [14]

It further shows that she was re-registered into her father's family Record on September 22, 1927.

(In accordance with Japanese law, a marriage takes place when the official Registrar is notified. Therefore the registration of Toshiko Inaba into the family of Hanzo Yamamoto constituted a legal marriage with Torao Yamamoto.

This re-registration was the result of ‘mutual consent’ and necessitates the consent of the persons who possess the right to consent to the marriage. The result of this re-registration was to take the name of Toshiko Inaba from her husband's Family Record and re-register it in the Family Record of her father. After re-registration the wife resumes her maiden name. The act of re-registration in this case is not a judicial decree.

(Signed) K. SEKI,

Consulate General of Japan.

(Id., pp. 32, 33.)

(Seal).”

II.

WHETHER RE-REGISTRATION OF APPLICANT CONSTITUTES A COMPLETE nullification of the marriage, or merely a dissolution of same.

There was in evidence before the Board of Spe-

cial Inquiry the following letter from the Consul General of Japan:

“CONSUL GENERAL OF JAPAN,
22 Battery Street,
San Francisco, California.

Hon. Edward L. Haff,
Acting Commissioner of Immigration,
U. S. Department of Labor,
Angel Island Station,
San Francisco, California.

Dear Sir:

Please refer to your letter of October 24, 1928, file No. 27184/23-10, pertaining to annulment of marriage in Japan, in which you quote

‘What constitutes an annulment of marriage in Japan?’

In answer to the foregoing, we beg to advise you that a marriage may be annulled in most cases under the Japanese law for the following causes:
[15]

1. A marriage of a person who is not legally of age;
2. A bigamous marriage;
3. A marriage before the lapse of a legally fixed period of time after the dissolution or annulment of a former marriage;
4. A marriage between the parties to an adultery;
5. A marriage between relatives who are legally prohibited from marrying;

6. A marriage between an adopted child, his or spouse, his or her lineal descendants or their spouses on the one hand, and the adoptive parents or their lineal ascendants on the other;
7. A marriage contracted without consent of those persons whose consent is necessary to the marriage;
8. A marriage owing to fraud or coercion;
9. And in case of the adoption of a man as a son each party to the marriage may apply to a court and demand annulment on the ground of invalidity or annulment of the adoption.

Answering your second question.

If a marriage is annulled, it is re-registered in the Family Record exactly the same as though it had been a divorce.

In other words, it makes no difference whether the marriage had been annulled, or divorced by mutual consent, or otherwise, the fact is properly entered in the Family Record of both the husband and of the wife.

An annulment under the Japanese law must be predicated upon the grounds hereinabove set forth as reasons for annulling a marriage and has no retroactive effect.

Divorce is not in the nature of a nullification of the original proceeding, but is entirely different and does not impair the legality of the marriage or original proceeding.

Trusting that the above explanation may simplify matters for you, I am

Respectfully,

UNICHI IDE,

Consul General of Japan."

(Id., p. 40, 41.)

Applicant Toshiko Inaba testified as follows:

"Q. In answer to the two questions quoted to you, the Counsel General under date of October 27th outlines causes for which marriages in Japan may be annuled and states that annulment under the Japanese law must be predicated upon the ground set forth in his letter as reasons for annulling the marriage. Were you legally of age when you were married? [16]

A. I do not know what legally the age is—but I think it is sixteen and I was over that age when I married.

Q. Were either you or Torao Yamamoto married to another when you married him?

A. No, he had been married so I had been told. No doubt he was divorced. I am not familiar with the details as he was in another Ken.

Q. Do you know that he had previously been married?

A. I was told he was married—that's all. Someone in the family told me,—I can't remember who.

Q. Was he a divorced man or a widower?

A. Divorced.

Q. How shortly after his divorce were you registered as his wife?

A. I should think it must have been a year from what I heard.

Q. You previously stated that you and Torao Yamamoto are first cousins, did you not?

A. Yes, he is the son of my father's brother.

Q. May first cousins be legally married in Japan?

A. I understand they may.

Q. Were you coerced into marrying Mr. Yamamoto?

A. I do not know whether you would call it 'coerced' but to me it was as they had made all arrangements. They simply went ahead and told me I must go through with it; according to Japanese way of thinking I had no alternative and no voice in the matter.

Q. Did you voice any objection to marrying him?

A. Yes, I did; I told him 'No.' One of my objections was that I had not finished school and also that I had not seen him since we were children.

Q. What was said to your objections?

A. They simply said, 'You will have to go through with it.' The uncle in charge of my affairs said that. I refer to my mother's brother, Inaba.

Q. Have you any statement to make?

A. I wish to explain that my mother's brother, Inaba, had taken care of us and stood as my father since I went to Japan so he made the arrangements for this marriage without consulting me according to the Japanese custom. After I was notified that I was to be the wife of my cousin Torao Yamamoto I objected and kept objecting until they

canceled the registration and re-registered me into the Inaba family.”

(*Id.*, p. 43.) [17]

GEORGE J. HATFIELD,
United States Attorney.
Per WILLIAM A. O'BRIEN.

Service of the within — by copy admitted this 21st day of February, 1929.

ALBERT H. ELLIOT and
GUY C. CALDEN,
Attorneys for Petitioner.

Filed March 25, 1929. [18]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 25th day of March, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—MARCH 25, 1929—ORDER SUBMITTING CAUSE ON BRIEFS, ETC.

After argument, ordered that the order to show cause as to issuance of writ of habeas corpus herein be and the same is hereby submitted on briefs to be filed in 5, 5 and 3 days. Further ordered that peti-

tioner's motion for leave to be admitted to bail be and same is hereby denied. [19]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 10th day of May, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 10, 1929—ORDER SUBMITTING CAUSE.

On motion of R. L. Frick, Esq., ordered that the order to show cause as to issuance of writ of habeas corpus herein be and the same is hereby submitted. [20]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 22d day of August, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—AUGUST 22, 1929—
ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS.

It is ordered that the petition for writ of habeas corpus heretofore submitted herein be and the same is hereby denied and the petition for writ dismissed. [21]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Now comes Toshiko Inaba, the petitioner and appellant herein, and says:

That on the 22d day of August, 1929, the above-entitled court made and entered its order denying the petition for a writ of habeas corpus as prayed for, on file herein, in which said order in the above-entitled case certain errors were made to the prejudice of the petitioner and appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, this petitioner and appellant prays that an appeal may be granted in her behalf to the Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and further that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may

be sent and transmitted to the said Circuit Court of Appeals; and further, that the said detained be held within the jurisdiction of this Court during the pendency of the appeal herein so that she may be produced in execution of whatever judgment may be finally entered herein.

Dated: San Francisco, California, August 26th, 1929.

ALBERT H. ELLIOT,
GUY C. CALDEN,

Attorneys for Petitioner and Appellant.

Filed Aug. 30, 1929. [22]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now Toshiko Inaba, the petitioner and appellant herein, by her attorneys, in connection with the petition for an appeal herein, assigns the following errors which she avers occurred upon the hearing of the above-entitled case and upon which she will rely upon appeal to the Circuit Court of Appeals for the Ninth Circuit, to wit:

I.

That the Court erred in denying the petition for a writ of habeas corpus herein and remanding the petitioner and appellant to the Immigration authorities for deportation.

II.

That the Court erred in holding that it had no ju-

isdiction to issue a writ of habeas corpus as prayed for in the petition herein.

III.

That the Court erred in holding that the allegations of the petition were not sufficient to justify the issuance of the order to show cause, as prayed for in said petition and in remanding the petitioner and appellant to the Immigration authorities for deportation.

IV.

That the Court erred in holding that the allegations contained in the petition herein for a writ of habeas corpus and the facts presented upon the issue made and joined herein [23] were insufficient in law to justify the discharge of the petitioner from custody as prayed for in said petition.

V.

That the Court erred in holding that the decisions of the Board of Special Inquiry and of the Secretary of Labor are not erroneous in law and that the said officials have not misconstrued the expatriation laws of the United States.

VI.

That the Court erred in not holding that the imprisonment and detention of petitioner and appellant are illegal and without authority for the reason set forth in appellant's amended petition for writ of habeas corpus, to wit:

First, that the said petitioner is a citizen of the

United States and has committed no act of expatriation; and

Second, that the said Hon. John D. Nagle, Commissioner of Immigration, has no authority in law, or jurisdiction to issue any warrant for the removal and deportation to Japan of petitioner, as there is no proof before the said Commissioner of Immigration to show or justify the conclusion that petitioner is not a citizen of the United States, but on the other hand, that the evidence, as herein alleged, amply shows that the alleged marriage of petitioner and of said Torao Yamamoto was no marriage at all under the laws of Japan or under the laws of the State of California or of the United States.

VII.

That the Court erred in holding that petitioner and appellant is of a race ineligible to citizenship, not excepted by any of the provisions of the Immigration laws, and that she had lost her American citizenship by marriage to a person not a citizen of the United States and not eligible to citizenship therein.

VIII.

That the judgment made and entered herein was and is contrary to law. [24]

IX.

That the judgment made and entered herein is not supported by the evidence.

X.

That the judgment made and entered herein was

and is contrary to the sworn allegations of the petition for a writ of habeas corpus.

XI.

That the judgment made and entered herein is contrary to the evidence.

WHEREFORE, the petitioner and appellant prays that the judgment and order of the Southern Division of the United States District Court for the Northern District of California, Southern Division, made and entered herein on the 22d day of August, 1929, denying the petition for a writ of habeas corpus, and refusing an order to show cause why the writ of habeas corpus should not issue on the allegations of said petition, and remanding the petitioner and detained to the Immigration authorities for deportation, be reversed, and that this cause be remitted to the lower court with instructions to issue a writ of habeas corpus as prayed for in said petition.

Dated: San Francisco, California, August 26th, 1929.

ALBERT H. ELLIOT,
GUY C. CALDEN,

Attorneys for Appellant and Petitioner.

Filed Aug. 30, 1929. [25]

[Title of Court and Cause.]

ORDER ALLOWING PETITION FOR AP-
PEAL.

On this 30th day of August, 1929, comes Toshiko Inaba, the detained, by her attorneys, and having previously filed herein, did present to this Court, her petition praying for the allowance of an appeal to the Circuit Court of Appeals for the Ninth Circuit, intending to be urged and prosecuted by her, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent and transmitted to the Circuit Court of Appeals, and that such other and further proceedings may be had in the premises as may seem proper.

ON CONSIDERATION WHEREOF, the Court allows the appeal hereby prayed for and orders execution and remand stayed pending the hearing of the said case in the said Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that the respondent herein retain the said detained within the jurisdiction of this Court, and that she be not deported or permitted to depart from the jurisdiction of this Court, but remain and abide by whatever judgment may be finally rendered herein.

Dated at San Francisco, California, August 30th,
1929.

HAROLD LOUDERBACK,
United States District Judge.

Filed Aug. 30, 1929. [26]

BOND FOR COSTS ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS,
That we, Toshiko Inaba, as principal, and United States Casualty Company, as surety, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said United States of America, its certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of August, in the year of our Lord one thousand nine hundred and twenty-nine.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit depending in said court, between Toshiko Inaba, Petitioner and Appellant, vs. John D. Nagle, Commissioner of Immigration, Respondent and Appellee, a judgment was rendered against the said Toshiko Inaba, and the said Toshiko Inaba having obtained from said Court an order to reverse the judgment in the aforesaid suit, and a citation directed to the said Toshiko Inaba citing

and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now, the condition of the above obligation is such, that if the said Toshiko Inaba shall prosecute to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

This recognizance shall be deemed and construed to contain the "Express Agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

UNITED STATES CASUALTY COMPANY.

By J. H. DRISCOLL,
Its Attorney-in-Fact.

Acknowledged before me the day and year first above written.

_____. [27]

State of California,
County of San Francisco,—ss.

On this 25th day of August, 1929, in the year one thousand nine hundred and twenty-nine, before me, Thomas A. Dougherty, a notary public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared J. H. Driscoll, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of United States Casualty Company, and acknowl-

edged to me that he subscribed the name of Toshiko Inaba thereto as principal and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this certificate first above written.

THOMAS A. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Filed Aug. 30, 1929. [28]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 28 pages, numbered from 1 to 28, inclusive, contain a full, true and correct transcript of the records and proceedings, in the matter of Toshiko Inaba, on Habeas Corpus, No. 19,919, as the same now remain on file of record in this office.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of eleven dollars and seventy-five cents (\$11.75), and that the same has been paid to me by the attorneys for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 18th day of September, A. D. 1929.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [29]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States of America, to
JOHN D. NAGLE, Commissioner of Immigration, San Francisco, California, and United States Attorney for Northern District of California, San Francisco, California, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Toshiko Inaba is appellant and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and

why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable HAROLD LOUDERBACK, United States District Judge for the Northern District of California, Southern Division, this 30th day of August, A. D. 1929.

HAROLD LOUDERBACK,
United States District Judge.

Service of the within citation on appeal and receipt of a copy is hereby admitted this 30 day of August, 1929.

GEO. J. HATFIELD.

Filed Aug. 30, 1929. [30]

[Endorsed]: No. 5953. United States Circuit Court of Appeals for the Ninth Circuit. Toshiko Inaba, Appellant, vs. John D. Nagle, Commissioner of Immigration, San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 19, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Frank H. Schmid,
Deputy Clerk.

